

PEDRO IRIZARRY GUIDO

JUNE 26, 1970.—Ordered to be printed

Mr. EASTLAND, from the Committee on the Judiciary,
submitted the following

REPORT

[To accompany H.R. 5000]

The Committee on the Judiciary, to which was referred the bill (H.R. 5000), for the relief of Pedro Irizarry Guido, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE

The purpose of the proposed legislation is to pay Pedro Irizarry Guido, of San Juan, P.R., \$3,581.05 in full settlement of his claims for additional compensation for overtime and nightwork from July 10, 1946, to March 24, 1952.

STATEMENT

The facts of the case as contained in House Report No. 91-442 are as follows:

The Department of the Army in its report to the committee on a similar bill in the 89th Congress outlined the facts of the case as disclosed by its investigation, and stated that it deferred to the views of Congress as to whether relief should be extended to the individual in this case. The Comptroller General did not recommend favorable action. The bill was the subject of a subcommittee hearing on March 31, 1966. At that time, the sponsor of the bill, the Honorable Santiago Polanco-Abreu, Resident Commissioner of Puerto Rico, appeared before the committee to testify in support of the bill. At the same hearing, Thomas G. Watkins, representing the American Federation of Government Employees, also appeared to testify in support of the bill.

The information submitted to the committee established that Mr. Pedro Irizarry Guido has been employed as a civilian employee by the Department of the Army since February 1946, at Fort Buchanan, P.R. In the period from July 10, 1946, through March 24, 1952, which is the time relevant to the claim embodied in this bill, he was employed by the Quartermaster Supply Office of that installation and was specifically assigned the duty of "night duty checker" or "clerk on night duty." This position required Mr. Guido to serve as a "watchman-caretaker" for the protection of the quartermaster property and performance of other miscellaneous duties of approximately the same level of difficulty. These included receiving emergency shipments after regular office hours, answering the telephone, and taking care of all routine actions. He performed these duties between 4 p.m. and midnight daily except Saturdays, Sundays, and holidays. His position also required him to remain on the installation available for duty until 7.30 a.m. and to accompany an engineer refrigeration checker to unlock two cold storage warehouses at 3 a.m. and 6 a.m. daily. Sleeping quarters were provided for him at the installation and provision was made for eating and sleeping during the tour. Mr. Guido's specific duties and the nature of his position as night checker remained constant from the time he accepted the job to March 24, 1952.

Mr. Guido first filed a claim for his nightwork on July 4, 1955. On February 18, 1957, the Comptroller General disallowed the claim on the grounds that available records do not substantiate the overtime and nightwork claimed. The committee feels that the fact that the claim was filed within the time required for payment shows that Mr. Guido was diligent in his attempts to exhaust administrative remedies available to him, and further that he acted promptly to protect his rights in this case.

Army records show that from July 10, 1946, to March 24, 1952, Mr. Guido received a fixed annual salary for the job of night checker. These records also show that for administrative purposes his salary was for a 5-day, 40-hour workweek plus overtime, if any. In addition he received a night differential allowance for his regularly assigned night duty hours. Mr. Guido's individual earnings records during the 5 years in question disclose that occasionally he performed overtime services, other than his duties in unlocking the warehouse doors, and that he received payment for these services in small and varying amounts. As pertinent time and attendance records have been destroyed according to routine records management procedures, it is impossible to identify what specific hours of overtime were reported as worked or the nature of the work performed.

The situation as reflected both in the Department of the Army report and the Comptroller General report is that the exact records concerning Mr. Guido's extra duties are not available. The Army does observe that this duty entailed

approximately 1½ hours every night and that further the performance of these duties occurred at times which prevented uninterrupted sleep. The Army stated that Mr. Guido performed all duties in this period in a knowledgeable, faithful, and commendable manner. Further, the committee observes that the Army report states that available records suggest that Mr. Guido was paid no compensation for this particular duty. Based upon the number of workdays in each pay period less an estimated period of leave, the Army determined that an award of \$3,581.05 would be an appropriate amount to compensate Mr. Guido for the time spent in performing his additional duties. This amount would represent overtime and night differential pay for the time estimated by the Army that Mr. Guido would have performed these duties.

A consideration of all the facts and circumstances of this case has led the committee to conclude that this claim should be favorably considered. The bill provides for a payment of \$3,581.05. The formula followed by the Army in arriving at this amount appears to be the best solution of the matter which can be obtained in the light of all the circumstances. Accordingly, it is recommended that the bill be considered favorably.

In agreement with the views of the House, the committee recommends the bill favorably.

Attached hereto and made a part hereof are the reports from the agencies.

DEPARTMENT OF THE ARMY,
Washington, D.C., January 25, 1966.

HON. EMANUEL CELLER,
Chairman, Committee on the Judiciary,
House of Representatives

DEAR MR. CHAIRMAN: Reference is made to your request for the views of the Department of the Army on H.R. 2914, 89th Congress, a bill for the relief of Pedro Irizarry Guido.

This bill provides "That the Secretary of the Treasury is authorized and directed to pay, out of any money in the Treasury not otherwise appropriated, to Pedro Irizarry Guido, of San Juan, P.R., the sum of \$24,784.82 in full settlement of all his claims against the United States for additional compensation for overtime and nightwork during the period July 10, 1946, to March 24, 1952, as an employee of the Department of the Army, Quartermaster Supply Office, Fort Buchanan, P.R."

The Department of the Army has considered the bill.

Departmental records and records made available to the Department disclose that since February 1946, Pedro Irizarry Guido, Las Lomas, Rio Piedras, P.R., has been employed as a Federal civilian employee of the Antilles Quartermaster Command, Fort Buchanan, P.R. From July 10, 1946, to March 24, 1952, he was employed by the quartermaster supply office of that installation under the different job classifications of "clerk," "general clerk," and "checker," but with the specifically assigned duty of "night duty checker" or "clerk on night duty." This position required Mr. Guido to serve as a

"watchman-caretaker" for the protection of the quartermaster property and performance of other miscellaneous duties of approximately the same level of difficulty. These included receiving emergency shipments after regular office hours, answering the telephone, and taking care of all routine actions. He performed these duties between 4 p.m. and midnight daily except Saturdays, Sundays, and holidays. His position also required him to remain on the installation, available for duty until 7:30 a.m. and to accompany an engineer refrigeration checker to unlock two cold storage warehouses at 3 a.m. and 6 a.m. daily. Sleeping quarters were provided for him at the installation, and provision was made for eating and sleeping during the tour. Mr. Guido's specific duties and the nature of his position as night checker remained constant from the time he accepted the job through March 24, 1952.

On July 4, 1955, Mr. Guido filed a claim against the U.S. Government in the amount of \$24,784.82. This represented money allegedly owed him for overtime and night work performed over the 5 years, 8 months, and 14 nights from July 10, 1946, to March 24, 1952. He claimed performance of 37½ hours of extra work per week for which he was not paid. In essence this amounted to the 7½ hours between midnight and 7:30 a.m. daily that he was required to remain at the installation available for duty should it arise. On February 18, 1957, the Comptroller General disallowed the claim on the ground that the available records failed to substantiate the overtime and nightwork claimed. In 1961 the Comptroller General reexamined the claim and found no basis for changing his earlier ruling. The present bill is for the exact amount for which Mr. Guido made claim in 1955 and is apparently based on the same premise.

The available records show that from July 10, 1946, to March 24, 1952, Mr. Guido received a fixed annual salary for the job of night checker. These records also show that for administrative purposes his salary was for a 5-day, 40-hour workweek plus overtime, if any. In addition he received a night differential allowance for his regularly assigned night duty hours. Mr. Guido's individual earnings' records during the 5 years in question disclose that occasionally he performed overtime services, other than his duties in unlocking the warehouse doors, and that he received payment for these services in small and varying amounts. As pertinent time and attendance records have been destroyed according to routine records management procedures, it is impossible to identify what specific hours of overtime were reported as worked or the nature of the work performed.

The Department of the Army cannot ascertain whether Mr. Guido received overtime compensation or compensatory time off for the time spent in unlocking the warehouse doors. This duty entailed approximately 1½ hours every night and occurred at times which prevented uninterrupted sleep. Mr. Guido performed all duties through this period in a knowledgeable, faithful, and commendable manner and available records suggest no compensation for this particular duty. Based upon the number of workdays in each pay period less an estimated period of leave, the Department of the Army has determined that an award of \$3,581.05, representing overtime and night differential pay, would be appropriate to compensate Mr. Guido for the

time spent in performing his additional duties in the event Congress considers such an award meritorious. In view of these circumstances, the Department of the Army defers to the views of Congress.

The cost of this bill, if enacted as introduced, will be \$24,784.82. If amended to accord with the computation suggested in this report, the cost will be \$3,581.05.

The Bureau of the Budget advises that, from the standpoint of the administration's program, there is no objection to the presentation of this report for the consideration of the committee. Letters stating the views of the Civil Service Commission and the General Accounting Office are enclosed at the request of the Bureau of the Budget.

Sincerely yours,

STANLEY R. RESOR,
Secretary of the Army.

Enclosures:

1. Civil Service Commission letter dated July 23, 1965.
2. General Accounting Office letter dated July 15, 1965.

U.S. CIVIL SERVICE COMMISSION,
Washington, D.C., July 23, 1965.

MR. PHILIP S. HUGHES,
*Assistant Director for Legislative Reference,
Bureau of the Budget.*

DEAR MR. HUGHES: This is in response to your request of June 30, 1965, for the Commission's views on H.R. 2914, a bill for the relief of Pedro Irizarry Guido, and on the report which Department of the Army proposes to submit to the House Judiciary Committee.

In its proposed report, the Department of the Army suggests an amendment reducing the amount to be paid Mr. Guido and states it would have no objection to the bill if so amended. The Commission does not feel the Department's report supports this position.

The purpose of this legislation, as explained in the Department's report, is to compensate Mr. Guido for certain services which he allegedly performed without compensation between July 1946 and March 1952. There is no indication that any question about payment was made until about 3 years later. By that time official time and attendance records for the period had been routinely destroyed and no other documented evidence was available to show whether Mr. Guido had been fully compensated for his services or, if not, what balance was due him. His claim was denied twice by the General Accounting Office because of lack of substantiating evidence. It cannot now be taken into court because of the statutes of limitation.

In view of the lack of evidence to support Mr. Guido's claim and the time which elapsed before he sought payment for the alleged services, the Commission finds no justification for enactment of H.R. 2914 either as introduced or with the amendment proposed by the Department of the Army. This type of private relief measure, involving a questionable claim, would establish a most undesirable precedent by in effect placing the burden of proof in such cases on the Federal agencies rather than on the claimants. Unless it can be established beyond reasonable doubt that the Government is indebted to Mr.

Guido for services he was officially directed to perform or unless there are extenuating circumstances not discussed in the Department's report, the Commission would recommend against favorable consideration of H.R. 2914.

By direction of the Commission:

Sincerely yours,

JOHN W. MACY, Jr., *Chairman.*

COMPTROLLER GENERAL OF THE UNITED STATES

Washington D.C., July 15, 1965.

B-131603.

HON. CHARLES L. SCHULTZE,
Director, Bureau of the Budget.

DEAR MR. SCHULTZE: This refers to the legislative referral memorandum dated June 30, 1965, from your office requesting our views concerning a proposed report of the Department of the Army on H.R. 2914, 89th Congress, for the relief of Pedro Irizarry Guido.

The bill would authorize payment of Pedro Irizarry Guido, of San Juan, P.R., the sum of \$24,784.82 in full settlement of all his claims against the United States for additional compensation for overtime and nightwork during the period July 10, 1946, to March 24, 1952, as an employee of the Department of the Army, Quartermaster Supply Office, Fort Buchanan, P.R. The Department of the Army, in its report on the bill, says it has no objection to the bill if the amount thereof is reduced to \$3,581.05, which amount is viewed as appropriate to compensate Mr. Guido for the service in question.

Mr. Guido filed claim here in October 1955 or more than 3 years following the close of the period during which he allegedly performed the overtime services. The agency's report which we obtained on the matter reads, in pertinent part, as follows:

"1. The claim of Mr. Pedro Irizarry Guido for overtime work allegedly performed during the period July 10, 1946, to March 24, 1952, has been analyzed [sic].

"2. The civilian personnel and payroll records available in this headquarters have been carefully investigated in order to determine the merits of subject claim. It is a matter of record that during the period of July 10, 1946, to March 24, 1952, Mr. Irizarry Guido was employed by the Quartermaster Supply Office, Fort Buchanan, P.R. under different designations. It also appears from the records that all overtime work reported as worked by him during the period covered was duly certified and actually paid in full as evidenced by the photostats of individual earnings records attached.

"3. In view of the above the file of correspondence was referred to the Quartermaster Supply Office, Fort Buchanan, P.R., for investigation. Copy of the correspondence forwarded to the aforementioned office as well as their reply is enclosed herewith.

"4. In addition to the above, several of the employees mentioned by Mr. Irizarry Guido in his correspondence were contacted in an effort to secure further information which might be used in the development of his claim. All the employees interviewed stated that although they were aware of the fact that the claimant was assigned

the duties of a night duty checker at the Quartermaster Supply Office during the period covered by the claim, they had no knowledge that he was ever required to work in excess of his regular schedule work-week of 40 hours.

"5. After considering the findings outlined above, it is concluded that there are no official records available to support the subject claim, and therefore, there is no authority under which a payroll may be properly certified for payment. The complete file of correspondence is returned herewith."

On the basis of the foregoing statements and the fact that the individual earnings records indicated that the employee had been paid for all overtime reported as worked the agency recommended unfavorable consideration of the claim.

The photostatic copies of the employee's individual earnings records indicated that he was regularly paid night differential and, on occasions, when overtime services were ordered and performed after midnight he was paid at overtime rates. In view of such records and the report of the Department we found no basis for allowance of his claim. The matter was reviewed on several occasions but no different conclusion was reached.

Mr. Guido contends that although his official duty hours were from 4 p.m. to midnight as a night duty checker he was required to remain on duty until 7:30 or 8 a.m. each morning and while he was required to sign the attendance record to show performance of only 8 hours of duty he actually was on official duty for the entire period. Thus the amount of his claim for overtime greatly exceeds the amount of his regular salary plus night differential for the period of more than 5 years and 8 months.

The reports of the Department of the Army disclose that the employee's regularly assigned hours were from 4 p.m. until midnight, for which he was paid at the regular rates of compensation plus night differential. They also show that sleeping quarters were provided for him at the installation and provision was made for eating and sleeping during the tour. In this connection the courts have held in such cases that hours of a tour devoted to sleeping and eating are not compensable (151 Ct. Cl. 21). The records suggest that the only regular duty performed by Mr. Guido after midnight was to accompany the engineer refrigeration checker for the purpose of unlocking two cold storage warehouses at 3 a.m. and 6 a.m., and as stated earlier herein, his individual earnings records show that on the few occasions when other duties were performed after midnight he was paid therefor at overtime rates.

The official time and attendance records and the supporting documents covering the period involved have been destroyed in accordance with Department of the Army regulations AR 345-255. Consequently, that Department is unable to determine whether Mr. Guido was paid overtime or granted compensatory time off in lieu thereof for any time spent in unlocking the warehouse doors. The individual earnings records show only the number of hours an employee is in a pay status in each pay period and the amount of compensation he receives therefor. An employee who is on authorized annual or sick leave or who is given compensatory time off in lieu of overtime compensation is in a pay status. Therefore, the earnings records of Mr.

Guido do not afford any accurate basis for determining the number of days upon which he performed the service for which he claims, the time spent in unlocking the two doors each day he was present, or whether he was given compensatory time off for such service.

We have received no information since our earlier action in the matter which would justify a change in our position, hence, we are not in accord with the relief proposed to be granted by the bill or relief in the reduced amount proposed by the Department of the Army. However, if the Department now feels that Mr. Guido is entitled to some compensation on account of his claim we do not view the method used in estimation of the compensation proposed to be paid as unreasonable under the circumstances and, therefore, have no objection to the presentation of the subject report.

An identical bill (H.R. 8807) was introduced in the 88th Congress and we expressed similar views thereon by letter of October 5, 1964, B-131603, to your agency.

Sincerely yours,

FRANK H. WEITZEL,
Acting Comptroller General of the United States.

COMPTROLLER GENERAL OF THE UNITED STATES,
Washington, D.C., November 15, 1963.

B-131603.

HON. EMANUEL CELLER,
*Chairman, Committee on the Judiciary,
House of Representatives.*

DEAR MR. CHAIRMAN: Your letter of October 17, 1963, acknowledged October 18, requests our views on H.R. 8807.

The bill would authorize payment to Pedro Irizarry Guido, of San Juan, P.R., of the sum of \$24,784.92 in full settlement of all his claims against the United States for additional compensation for overtime and nightwork during the period July 10, 1946, to March 24, 1952, as an employee of the Department of the Army, Quartermaster Supply Office, Fort Buchanan, P.R.

Mr. Guido filed claim here in October 1955 or more than 3 years following the close of the period during which he allegedly performed the overtime services. The agency's report which we obtained on the matter reads, in pertinent part, as follows:

"1. The claim of Mr. Pedro Irizarry Guido for overtime work allegedly performed during the period July 10, 1946, to March 24, 1952, has been analyzed [sic].

"2. The civilian personnel and payroll records available in this headquarters have been carefully investigated in order to determine the merits of subject claim. It is a matter of record that during the period July 10, 1946, to March 24, 1952, Mr. Irizarry Guido was employed by the Quartermaster Supply Office, Fort Buchanan, P.R., under different designations. It also appears from the records that all overtime work reported as worked by him during the period covered was duly certified and actually paid in full as evidenced by the photostats of individual earnings records attached.

"3. In view of the above the file of correspondence was referred to the Quartermaster Supply Office, Fort Buchanan, P.R., for investigation. Copy of the correspondence forwarded to the aforementioned office as well as their reply is enclosed herewith.

"4. In addition to the above, several of the employees mentioned by Mr. Irizarry Guido in his correspondence were contracted in an effort to secure further information which might be used in the development of his claim. All the employees interviewed stated that although they were aware of the fact that the claimant was assigned the duties of a night duty checker at the Quartermaster Supply Office during the period covered by the claim, they had no knowledge that he was ever required to work in excess of his regular schedule work-week of 40 hours.

"5. After considering the findings outlined above, it is concluded that there are no official records available to support subject claim, and therefore, there is not authority under which a payroll may be properly certified for payment. The complete file of correspondence is returned herewith."

The photostatic copies of the employee's individual earning records indicated that he was regularly paid night differential and, on occasions, when overtime services were ordered and performed after midnight he was paid at overtime rates. In view of such records and the report of the Department we found no basis for allowance of his claim. The matter was reviewed on several occasions, but no different conclusion was reached.

Mr. Guido contends that although his official duty hours were from 4 p.m. to midnight, as a night duty checker, he was required to remain on duty until 8 a.m. each morning, and while he was required to sign the attendance record to show performance of only 8 hours of duty, he actually was on official duty for 16 hours each day. Thus, the amount of his claim for overtime greatly exceeds the amount of his regular salary plus night differential for the period of more than 5 years and 8 months.

The reports of the Department of the Army disclose that the employee's regularly assigned hours were from 4 p.m. until midnight, for which he was paid at the regular rates of compensation plus night differential. They also show that sleeping quarters were provided for him at the installation and provision was made for eating and sleeping during the tour. In this connection the courts have held in such cases that hours of a tour devoted to sleeping and eating are not compensable (151 Ct. Cl. 21). The record suggests that the only regular duty performed by Mr. Guido after midnight was to accompany the engineer refrigeration checker for the purpose of unlocking two cold storage warehouses at 3 a.m. and 6 a.m. and as stated earlier herein his individual earnings record shows that on the few occasions when other duties were performed after midnight he was paid therefor at overtime rates.

The official time and attendance records and the supporting documents covering the period involved have been destroyed in accordance with Department of the Army Regulations AR 345-255. Consequently that Department is unable to make a definite statement whether Mr. Guido was paid overtime or granted compensatory time off in lieu thereof for any time spent in unlocking the warehouse doors. The indi-

vidual earnings records show only the number of hours an employee is a pay status in each pay period and the amount of compensation he receives therefor. An employee who is on authorized annual or sick leave or who is given compensatory time off in lieu of overtime compensation is in a pay status. Therefore, the earnings records of Mr. Guido do not afford any accurate basis for determining the number of days upon which he performed the service for which he claims, the time spent in unlocking the two doors each day he was present, or whether he was given compensatory time off for such service.

Under the circumstances we do not recommend favorable action on the bill. However, if it is felt that Mr. Guido is entitled to some compensation on account for his claim, we suggest that the computation be based upon the number of workdays in the period from July 10, 1946, to March 24, 1952, multiplied by the estimated time required each day for the known duty said to have been performed, less an estimated number of days of annual and sick leave which the employee may have used.

Sincerely yours,

JOSEPH CAMPBELL,
Comptroller General of the United States.

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